

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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ADAM B. LEVY,

Index No.:

Plaintiff,

- against -

VERIFIED COMPLAINT

Jury Trial Demanded_

DONALD B. SMITH, individually and
not in his capacity as a employee of
the County of Putnam, and "JOHN DOE
1" through "JOHN DOE 7", potential
unidentified Defendant's in this action

Defendants.

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By and through his counsel, Michael H. Sussman, Esq., plaintiff, ADAM B.
LEVY, hereby states as and for his Verified Complaint:

A. PARTIES

1. Plaintiff Adam B. Levy, currently serves as the duly elected District
Attorney in and for the County of Putnam and resides within the jurisdiction of this
Court.

2. Defendant, Donald B. Smith, is the Putnam County Sheriff, first elected in
2001 and currently seeking re-election in November 2013 to his fourth term. Mr.
Smith resides within the jurisdiction of this Court and is sued in his personal capacity.
Defendants John Does 1-7, whose identities are not known with certainty by the
plaintiff, represent individuals who participated in the publication and dissemination of
the below-referenced defamatory statements with defendant Smith.

B. JURISDICTION

3 As this action sounds in defamation and as the sum in controversy

exceeds that over which inferior courts have jurisdiction, this Honorable Court has jurisdiction to hear and decide this matter. Plaintiff respectfully demands a jury trial.

4. This action is premised upon the actions of defendant Smith who, intentionally and with actual malice, published false and defamatory statements regarding plaintiff in connection with his department's March 2013 rape investigation involving Alexandru Hossu, a family friend of the plaintiff's.

C. GENERAL BACKGROUND

5. From plaintiff's first days in office as District Attorney, commencing in January 2008, he sought to partner with defendant Smith and his senior investigators in the Bureau of Criminal Investigation¹ to improve felony investigations and prosecutions in Putnam County.

6. Plaintiff offered suggestions and provided examples of the types of proven enhancement tools that, if implemented, would increase the likelihood of successful prosecutions of violent offenders. Examples of these types of enhancement tools included the videotaping of suspect interviews and partnering with prosecutors at the earliest stages of criminal investigations so as to strengthen cases before an arrest was made.

7. Initially, defendant Smith and his senior investigators rejected plaintiff's suggestions, including the videotaping initiative, and were not interested in following the advice of Assistant District Attorneys during the investigatory phase of a case.

8. Then, after April 2008, defendant Smith and his senior investigators became more receptive to plaintiff's suggestions and agreed to a limited videotaping program to record interviews of suspects in violent crime cases (re-cap videos) and

¹ The Bureau of Criminal Investigation is the unit responsible for investigating all felony matters for the Putnam County Sheriff's Department.

also began to involve prosecutors earlier in their investigations.

9. Between 2008 – 2010, an increase in the level of cooperation and collaboration between the Putnam County District Attorney's Office and Putnam Sheriff's Department occurred.

10. However, beginning in late 2010, plaintiff detected a simmering hostility from within defendant Smith's Department toward plaintiff. Smith and his senior investigators rejected plaintiff's request to expand the extremely successful videotaping program and Smith's supervisors often instructed subordinates to disregard the advice and suggestions offered by Assistant District Attorneys.

11. As a result, violent criminal prosecutions were jeopardized and crime victims, many of them children, were ignored.

12. In 2011 and 2012, for reasons unknown to plaintiff, defendant Smith's outward hostility towards plaintiff intensified. In response, plaintiff scheduled several meeting with Smith to address the deteriorating relationship.

13. During this same time period, plaintiff concluded that many of the decisions Smith made appeared politically motivated, void of legitimate law enforcement purposes and carried the potential to cause great harm to violent crime victims, Putnam County taxpayers, police officers and the overall fair and impartial administration of justice.

14. Examples of these decisions include, but are not limited to, defendant Smith's refusal to address his department's repeated failure to follow the operating principles of the Child Advocacy Center ("CAC)" of Putnam County's Interagency Agreement, suborning blatant conflicts of interest within his department, accepting financial contributions from donors and then providing official law enforcement

benefits in return, using taxpayer dollars to buy political support from powerful labor unions, as well as gross instances of public grandstanding to further his political image, even while placing his own officers and those of other departments at risk of injury or death.

15. Plaintiff sought guidance from other Putnam County elected and appointed officials in an effort to learn the cause of Smith's change in demeanor and the reasons for his questionable actions, as illustrated in para. 14 supra., Smith rejected all of plaintiff's efforts to reach an accord.

16. Between 2012 and March 2013, faced with few options and in an effort to protect the integrity of the criminal justice process as well as the people who relied on it, plaintiff publically identified a number of Smith's decisions and policies that caused him grave concern.

D. SPECIFIC BACKGROUND TO DEFAMATORY STATEMENTS

17. On March 13, 2013, 15-year-old "S.H." and her Aunt, "B.F." arrived at the Putnam County Child Advocacy Center ("CAC") in Brewster, New York to report a rape alleged to have occurred in 2010.

18. CAC team members present for the interview included: Putnam County Assistant District Attorney Laura Roberts ("ADA Roberts"), Putnam County Sheriff "BCI" Investigator Steven Tricinelli ("Investigator Tricinelli") and Putnam Child Protective Service Worker Marie Fabiano.

19. Investigator Tricinelli and CPS worker Marie Fabiano interviewed B.F., while ADA Roberts observed from another room fitted with a closed circuit TV monitor.

20. During her brief interview, B.F. stated that her niece, S.H., recently reported being raped by her mother's ex-boyfriend, Alex Hossu, who was, according to B.F., a close friend and personal fitness trainer for "Judge Judy's son, Adam Levy".

21. Immediately after the Aunt's interview, ADA Roberts advised Investigator Tricinelli that she would have to contact plaintiff, report B.F.'s allegation and await further instructions.

22. Investigator Tricinelli told ADA Roberts that she could not contact plaintiff, but ADA Roberts disregarded Tricinelli and, as required, called her office.

23. ADA Roberts attempted to reach plaintiff by phone but was unsuccessful.

24. ADA Roberts then called the Putnam District Attorney's Office, spoke with Laurie Mainey, plaintiff's confidential secretary, and requested immediate assistance. Ms. Mainey advised ADA Roberts that plaintiff was on vacation with his family and that all efforts would be made to locate him.

25. Mrs. Mainey sent plaintiff an emergency text message that read "*Laura Roberts needs to speak with u immediately!*"

26. Within minutes of receiving this text, plaintiff contacted ADA Roberts who told him about Tricinelli's interview with B.F., the allegation against Hossu and the fact that B.F. stated Hossu was plaintiff's close friend.

27. Plaintiff confirmed with ADA Roberts that Hossu was a close personal friend and, to avoid the appearance of impropriety, advised ADA Roberts that he was

immediately recusing the Putnam DA's Office from further involvement with the investigation.

28. Plaintiff further told ADA Roberts that he would arrange for child sex crimes prosecutors from another DA's Office to take the place of the Putnam County DA's office and assist Tricinelli with the remaining interview until the Administrative Judge could issue a formal "special prosecutor" assignment. (See; County Law Section 701)

29. Plaintiff then called Chana Krauss, senior child sex crimes prosecutor with the Putnam DA's Office, and advised her of his conversation with ADA Roberts and his decision to recuse the Putnam DA's Office from further involvement with the matter.

30. Plaintiff also instructed ADA Krauss to contact Audrey Stone, senior child sex crimes prosecutor in the Westchester County DA's Office, whom ADA Krauss had worked with in prior child sexual abuse cases that crossed jurisdictional boundaries, and advise ADA Stone of: (1) the quickly unfolding rape investigation at the Putnam County CAC, (2) plaintiff's decision to recuse the Putnam DA's office from further involvement with the rape investigation and (3) the need for Westchester's immediate assistance to provide guidance to Investigator Tricinelli, who had not yet interviewed S.H.

31. Plaintiff also instructed his staff at the Putnam DA's Office to notify Judge Alan Scheinkman, Administrative Judge for the Ninth Judicial District, of his recusal decision and his request that the Court immediately assign the Westchester DA's Office as "special district attorneys" for the investigation.

32. Within minutes after having received the original emergency text message from his confidential secretary, plaintiff

1. spoke with ADA Roberts, confirmed the relationship between his family and Hossu, and told her that he was immediately recusing the Putnam DA's Office from further official involvement with the case and to wait further instructions,

2. spoke with ADA Krauss and arranged for the immediate assistance from senior sex crimes prosecutors from the Westchester DA's Office to: (a) assist Investigator Tricinelli, who had not yet interviewed S.H., and (b) provide any additional guidance to Tricinelli and CPS until the formal Special Prosecution assignment was issued by Judge Scheinkman;

3. made arrangements to notify Judge Scheinkman's office of his decision to recuse the Putnam DA's Office and requested that he immediately assign the Westchester DA's Office as "special prosecutors" to handle the Hossu investigation.

33. Proof of the above-mentioned actions are memorialized on a voice mail recording plaintiff left on Laurie Mainey's cell phone on March 13, 2013 at 4:10 pm., just 12 minutes after he received the initial emergency text message.

34. After having satisfied his legal and ethical responsibilities as mentioned above, plaintiff called ADA Krauss and directed her to contact the special prosecutors from Westchester and provide them with information he had about Hossu that might assist their office in the rape investigation. Specifically, plaintiff told ADA Krauss that he was aware that Hossu worked with children as a counselor at a local camp in Putnam and also provided personal training sessions with a teenage girl who was friends with his

daughter. 35. Plaintiff so proceeded because, as a former prosecutor, specially trained to investigate and prosecute child rape / sexual assault cases, he believed that if S.H.'s rape allegations were true, there would likely be other child rape victims who the Westchester DA's Office would need to locate and interview.

36. On March 13, 2013 between 4:27 pm and 6:19 pm, ADA Krauss and plaintiff exchanged several text messages that confirmed the special prosecutors from the Westchester DA's were on-board with their new assignment.

37. Despite this, Investigator Tricinelli started his interview with S.H. without first contacting Special ADA Audrey Stone or any other member of her office.

38. This process concerned plaintiff because the CAC is a multidisciplinary team comprised of specially trained prosecutors, child protective workers, and police who are required to work together to investigate and prosecute allegations of child sexual abuse.

39. Together, the team uses "best practices" to ensure child abuse cases are handled properly. These "best practices" are part of the inter-agency agreement that binds the CAC together as an organization.

40. That Investigator Tricinelli began his interview with S.H. without first at least attempting to contact the assisting prosecutor from Westchester County, was not only *extremely* suspicious, but also violated the Putnam County CAC Interagency Operating Principles and New York State Executive Law and New York State Social Service Law.

41. At 8:32 p.m., plaintiff received a follow-up text message from ADA Krauss that confirmed Special ADA Stone *"had still not heard from Inv Tricinelli"* notwithstanding the fact that Tricinelli had Special ADA Stone's name and cell number.

42. Plaintiff responded with a text, sent at 8:33 p.m. that stated: ***"Sure hope PCSO handles this case appropriately instead of trying to politicize it. Would be a real shame for everyone, especially 15 year old girl."*** (Emphasis added).

43. Plaintiff was concerned that defendant Smith, who was preparing for his re-election campaign, would manipulate this child rape investigation to further his political and personal agendas.

44. By 10:00 p.m., plaintiff had discussed his limited knowledge of the facts of the case with his wife. Since Mr. Hossu was a close friend to their family and a frequent guest in their home from March 2011 through June 2012, plaintiff and his wife decided to talk with their two older children about their contact with him. Both children were questioned and neither reported that Hossu touched them or acted inappropriately in any way while in their presence.

45. After speaking with his children and after considering all the facts and circumstances surrounding the B.F. interview, Tricinelli's decision to interview S.H. without first contacting the child sex crimes prosecutors from the Westchester DA's Office, and plaintiff's personal knowledge of prior cases where defendant Smith and his senior staff arrested a person without first conducting a complete and thorough investigation, plaintiff sent a final text to ADA Krauss, time-stamped at 10:02 pm which read, ***"...lets hope the sheriffs dept has learned a thing or two from your 5 years***

of training into how to enhance a [sex abuse] case where children are involved. My sneaking suspicion is they will make a summary arrest with absolutely no independent investigation.” (Emphasis added).

46. Plaintiff's concern that defendant Smith would: (a) “politicize” this case and (b) make a summary arrest of Hossu without first conducting a thorough investigation, was based upon a well-documented and sordid history of defendant Smith and many of his senior staff members engaged in similar conduct for similar reasons.

47. In March 2013 Smith was preparing for his November 2013 reelection campaign. As such, Smith and any other Republican challenger would first need to secure the endorsement of the Putnam County Republican party during their nominating conference scheduled in May 2013. Two challengers had come forward and announced their intent to seek the Republican endorsement, Kevin McConville (Former Chief of the MTA Police) and Christopher York (Chief of the Putnam County District Attorney's Office).

48. Between March 13, 2013 and March 20, 2013, plaintiff had no contact with defendant Smith, his senior staff or any child sex crimes prosecutor from the Westchester DA's Office in relation to the Hossu investigation.

49. As such, plaintiff was unaware of who, if anyone, was interviewed in connection with the rape investigation, what, if any, evidence was obtained that corroborated S.H.'s claims, or what, if any, evidence was discovered that contradicted her claims.

50. Plaintiff is advised that, after one full week of investigating S.H.'s rape claim (March 13-20, 2013), defendant Smith and his entire team of senior

investigators, had failed to locate any evidence to support S.H.'s claim, failed to obtain any evidence to support the charge, and failed to obtain any evidence that would support Hossu's arrest.

51. Accordingly, without Hossu's confession, there would be absolutely no credible evidence to corroborate S.H.'s rape allegation.

52. With this knowledge, on March 20, 2013 at approximately 9:00 p.m., Putnam County Deputy Sheriff Dan Hunsberger, who had a personal relationship with Hossu for over 10 years, responded to Hossu's home address at 221 Clock Tower Commons to engage Hossu in conversation and, if possible, get Hossu to admit to his role in the October 24, 2010 rape.

53. Deputy Hunsberger was instructed by Smith and/or the senior investigators to secretly record his conversation with Hossu and was provided with a recording device for that purpose.

54. During this interaction, Deputy Hunsberger advised Hossu of the sexual abuse allegations made by S.H. and offered Hossu the opportunity to explain.

55. Hossu repeatedly denied S.H.'s allegations and denied ever acting inappropriately with S.H. or any child.

56. After several minutes, Hunsberger left Hossu's home and reported back to Smith's senior staff for a debriefing.

57. After Hunsberger left Hossu's home at 221 Clock Tower Commons, Smith's senior staff responded to the Patterson Justice Court and filed a felony complaint that charged Hossu with Rape in the First Degree.

58. Investigator Stephen Tricinelli signed the felony complaint, under the penalty of perjury, and wrote: "Alexandru Hossu, on the **24th day of October 2010**...

did commit the offense of Rape in the First Degree...”

59. After Tricinelli filed the felony complaint that accused Hossu of the **October 24, 2010** forcible rape, he (or other senior staff members working with defendant Smith) requested that Judge Anthony Mole sign a warrant for Hossu's arrest.

60. On March 20, 2013 at approximately 10:20 pm, defendant Smith and his senior staff, armed with the arrest warrant, responded back to Hossu's home at 221 Clock Tower Commons and arrested him.

61. When defendant Smith and his senior staff applied for the arrest warrant, they were aware Hossu lived at 221 Clock Tower Commons. Not only had Deputy Hunsberger just been to the Hossu's residence, but defendant Smith was in possession of other documents maintained by the Putnam Sheriff's Department that confirmed Hossu's residence as “221 Clock Tower Commons”. Specifically, sheriff records confirm that on July 10, 2012, deputy sheriffs from the Putnam Sheriff's Department responded to Hossu's residence [“1 Clock Tower Commons, Unit 221”] after Hossu called to report a break-in. Hossu called 911 after S.H.'s mother forced her way into his home, got high by ingesting an intoxicating agent, and then refused to leave. Records confirm that deputy sheriffs responded to 221 Clock Tower Commons, found S.H.'s mother, and arrested her. Seven days after S.H.'s mother was arrested for breaking into Hossu's home, she was found dead, in Connecticut, from an apparent drug overdose.

62. In addition to the July 10, 2012 Arrest Report mentioned above, defendant Smith was also in possession of the November 22, 2012 New York State Incident Report that confirmed Hossu's address as “221 Clock Tower Commons.”

63. After Hossu was processed at the Putnam County Correctional Facility, he was transported to the Patterson Town Court for arraignment.

64. Judge Anthony Mole handled the arraignment. During the proceeding, that was recorded, Judge Mole asked one of the many Putnam County Sheriff Investigators present, "Any bail recommendation?" An "unidentified male investigator" replied "Westchester County D.A.'s office offers a bail recommendation, \$50,000 cash".² Judge Mole asked Mr. Hossu **"Where do you reside, sir?" and Mr. Hossu responded "Right now in Clock Tower...#29I or 292"** Judge Mole asked Mr. Hossu: "Where are you employed, sir?" and Mr. Hossu responded "I'm self-employed... I work at the World Gym in Brewster." As to the issue of bail, Judge Mole stated, "Okay, so we're going to abide by the D.A.'s recommendation, set bail \$50,000 cash, \$100,000 bond." Mr. Hossu was then remanded to the Putnam County Correctional facility.

65. For the seven days between S.H.'s March 13, 2013 rape disclosure at the Putnam CAC and March 20, 2013, the date Hossu was arrested, defendant Smith and his senior staff focused their time, energy and resources attempting to connect Hossu to plaintiff and not on thoroughly investigating the charges.

66. On March 20, 2013, Hossu was arrested despite the fact that neither Smith nor any of his senior staff conducted any type of **case enhancement** to support the charge. Case enhancement techniques available to defendant Smith and his senior staff included, but were not limited to: (1) confirming date of incident with phone records, emails, social media postings and medical records, (2) testing accuracy and reliability of

² PSCO investigators are required, pursuant to Criminal Procedure Law Section 530.20(2)(b)(i), to contact an assistant district attorney anytime they arrest a person charged with a felony in order to receive a bail recommendation.

S.H.'s accusations by interviewing witnesses who saw S.H. and Hossu together after October 24, 2010, (3) checking reliability of S.H.'s allegations by comparing the details of S.H.'s March 13, 2013 disclosure with other documents that contained S.H.'s disclosure details, (4) learning exactly how S.H.'s rape disclosure was made, to whom, under what circumstances, and what was done immediately thereafter, (5) performing a pediatric medical forensic examination, including an examination of the hymen and vagina, and compare the findings of that exam with the victim's pediatric or gynecological records that pre-dated and post-dated the alleged rape, and (6) obtaining a search warrant for any and all computers, cell phones, and other electronic devices in Hossu's possession.

67. Defendant Smith and his senior staff failed to obtain any of the records, failed to interview any of the witnesses and failed to obtain any of the documents that were available and accessible before deciding to arrest Hossu on March 20, 2013.

68. Particularly disturbing was the fact that neither Smith nor his senior investigators ever scheduled a routine Child Abuse Pediatric Medial Evaluation and never obtained a copy of S.H.'s past medical records before making the unilateral decision to arrest Hossu.

69. Instead, for the seven days between S.H.'s first disclosure at the CAC (March 13, 2013) and the day Hossu was arrested (March 20, 2013), defendant Smith and his senior staff focused their energies on locating and obtaining any evidence that could be used to link the alleged child rapist to plaintiff, his family and home address in Brewster, NY.

70.. Prior to Hossu's arrest on March 20, 2013, defendant Smith and/or his senior staff responded to the NYS Department of Motor Vehicles, located on Route 312 in Putnam County, to obtain Hossu's New York State driver's license information, specifically the address listed on his license. Smith's senior investigators were advised that, without a subpoena, DMV was not authorized to release that information. Instead of asking the special prosecutors to issue a grand jury subpoena that would lawfully allow Smith access to Hossu's official DMV record, Smith and his senior staff devised a plan to obtain Hossu's driver's license information in a more nefarious manner.

71. On March 19, 2013 at 8:20 pm, deputy sheriff M. Varley, working with defendant Smith and his senior investigators, was stationed outside Hossu's place of employment, World Gym, Route 22, Brewster, NY. Deputy Varley observed Hossu driving his car, performed a vehicle and traffic stop and demanded to see Hossu's driver's license. Hossu produced his valid NYS driver's license and was then issued a traffic summons for a cell phone violation.

72. After deputy Varley issued the traffic summons, Hossu, the "vicious and violent, 6'2" 220 pound illegal immigrant from Romania" who, according to defendant Smith, "violently raped a 12-year-old child", was released from Deputy Varley's custody and permitted to leave. One day later, March 20, 2013, Hossu, was arrested by senior members of defendant Smith's department at his home at 221 Clock Tower Commons, Brewster NY.

E. DEFENDANT SMITH'S DEFAMATORY STATEMENTS

73. On Thursday morning, March 21, 2013, a reporter from The Journal News

contacted plaintiff at the Putnam DA's Office. The reporter said that an anonymous source at the Putnam Sheriff's Department leaked a story about the recent arrest of Alexandru Hossu, who was accused of raping a 12-year-old girl. The reporter further advised that according to the "anonymous source" at the Putnam Sheriff's Department: (a) Hossu lived with plaintiff and his family at 70 Indian Wells Road in the Town of Southeast, (b) Hossu was employed by plaintiff as his "live-in personal trainer", and (c) Hossu was in the United States illegally.

74. Several hours later, defendant Smith issued his official press release which omitted any information pertaining to plaintiff or any relationship between plaintiff and Hossu. Instead, defendant Smith's press release stated:

*"Putnam County Sheriff Donald B. Smith reports that a man has been arrested on charges that he forcibly raped a **12-year-old girl** in Southeast. Mr. Alexandru Ionut Hossu, aged 35, of 70 Indian Wells Road in Southeast, was arrested by Sheriff's Office Investigators in town at about 10:30 P.M. yesterday (Wednesday, March 20th) upon an arrest warrant issued by the Town of Patterson Justice Court... **The complaint alleges that the defendant forcibly raped the victim twice on October 24, 2010, when she was 12 years old. The case came to the attention of authorities only recently, after the victim reported the alleged rape to a school counselor.** The victim, who is now 15, and the defendant reportedly knew each other... Investigators have determined that the defendant is in the United States unlawfully, having entered the country on a temporary work visa that expired about 12 years ago. He reportedly has been working in the Putnam County area as a personal fitness trainer for several years... 'This was a vicious crime committed against a little*

girl' said the Sheriff 'I thank our sheriff's investigators and deputies, the Child Advocacy Center Team and the Westchester County District Attorney's Office for their assistance in bringing the alleged perpetrator to justice'.

75. Following this press statement which connected Hossu to him and claimed that Hossu lived at his address, plaintiff received multiple inquiries from the media who wanted plaintiff's comment about Hossu, "the illegal Romanian immigrant who was living in his home and brutally raped a 12-year-old girl" and wanted to know how long plaintiff knew Hossu, when plaintiff met him, whether plaintiff knew of his immigration status, when did Hossu move into plaintiff's home, did plaintiff pay Hossu for his training services, how much plaintiff had paid him and whether it was plaintiff's daughter who Hossu raped.

76. The *Journal News*, a local newspaper in the Hudson Valley even posted a survey question on their website that asked viewers to cast their vote to the following question: "Should DA Levy resign from office?"

77. While plaintiff was at the Putnam DA's Office fielding questions from the news media, helicopters were flying over his home and strangers walking up to his front door, frightening his wife and young children.

78. Since taking office as District Attorney, plaintiff's life has been threatened by people who were successfully prosecuted by his office. One such threat overheard by plaintiff's wife and children was reported in the local media and caused family members tremendous stress.

79. When complete strangers started driving and walking up to plaintiff's front door after defendant Smith's press release, plaintiff's family was terrified and re-lived the threat referenced in paragraph 78.

80. Plaintiff immediately hired the services of a private security company to provide round-the-clock security.

81. On March 22, 2013, plaintiff issued a first press release which stated that defendant Smith had erroneously listed Mr. Hossu's address as 70 Indian Wells Road and that as DA, plaintiff had followed the law when, on March 13, 2013, he had recused his office and arranged for the appointment of a special district attorney once it was discovered that Mr. Hossu was accused of the October 24, 2010 rape. Plaintiff also reminded the citizens of Putnam County about his commitment to the aggressive prosecution of child sexual abusers since taking office in 2008 and his office's high rate of success in that regard.

82. In response to plaintiff's press release, defendant Smith issued a second Press Release, dated March 22, 2013, that contained a barrage of false and defamatory statements made with actual malice and designed to further impugn plaintiff's professional reputation. A true and accurate copy of same is annexed hereto as **Exhibit "A"**.

83. Defendant Smith's false and defamatory statements were published and re-published in the following newspapers and other assorted media outlets:

1. March 22, 2013 — The Journal News— **Putnam Sheriff: DA tries to influence**

rape case

- a. "Putnam County District Attorney Adam Levy is trying to influence the rape investigation focused on his former live-in personal trainer" Putnam County Sheriff Donald B. Smith said Friday.
- b. "Smith said he has formally requested that federal authorities investigate whether Levy broke any laws by aiding Alexandru Hossu", who was charged Wednesday with two counts of first-degree rape, a felony.
- c. "In my view, Mr. Levy's comments and actions would seem to suggest that, if he could have his own way, Mr. Hossu would never have been brought to justice for his crime and Mr. Levy's relationship with him would have never been brought to the light of public scrutiny," Smith said in a statement Friday night.
- d. "Smith also rebuffed Levy's previous claim that he decided to recuse his office from the Hossu investigation and accused Levy of trying to affect the investigation through continued official statements"
- e. "From Mr. Levy's statement today-and from other communications that have come out of his office in this case-it actually appears that he has failed to honor or abide by the recusal decision of the investigative team," Smith said.
- f. "Rather, he is apparently trying to influence and affect the investigation, which could be perceived as an ethical violation of his official duties and perhaps even an attempt to undermine it."

2. March 22, 2013 — USA Today — **Sheriff: DA trying to influence rape case**

- a. A New York district attorney is trying to use his office to influence a rape investigation focused on his former live-in personal trainer, a county sheriff said Friday.
- b. Putnam County Sheriff Donald B. Smith said he has formally requested that federal authorities investigate whether District Attorney Adam Levy broke any laws by aiding Alexandru Hossu, who was charged Wednesday with two counts of first-degree rape, a felony.
- c. "In my view, Mr. Levy's comments and actions would seem to suggest that, if he could have his own way, Mr. Hossu would never have been brought to justice for his

crime and Mr. Levy's relationship with him would never have been brought to the light of public scrutiny," Smith said in a statement Friday night.

- d. Smith's accusations came after the Sheriff's Office and Levy, in a series of statements issued Thursday and Friday, disagreed about several key factors of the case, including Hossu's true address and the decision for Levy to recuse his office from the investigation.
- e. Smith also rebuffed Levy's previous claim that he had decided to recuse his office from the Hossu investigation and accused Levy of trying to affect the investigation through continued official statements.
- f. "[DA Levy] is apparently trying to influence and affect the investigation, which could be perceived as an ethical violation of his official duties and perhaps even an attempt to undermine it."

3. March 22, 2013 – Channel 12 News – Westchester **“DA’s Trainer Charged”**

a. On March 22, 2013, the following story aired on Channel 12 News, “DA’s Trainer Charged”. The news story began as follows:

b. ***“We got a statement from Putnam County Sheriff, Donald Smith, blasting D.A. Adam Levy and accusing him of trying to undermine and influence their investigation of an accused child rapist.” (Emphasis added).***

c. Smith’s statement came to us late this evening, it levels a series of attacks on Putnam County District Attorney Adam Levy’s behavior accusing him of using his office to influence a child rape case involving a suspect he knew well.”

d. “The sheriff goes on to say that DA Levy actually inserted himself into the case. He is apparently trying to influence and affect the investigation, which could be perceived as an ethical violation of his official duties and perhaps even an attempt to undermine it.”

e. ***“In one of several attacks, that seem to border on personal***, the Sheriff also blasted Levy by saying, “Sadly, he is trying to distract the citizens from what this case is really about: the vicious rape of a little girl by a man whom he housed and hired as a personal trainer.” A true and accurate copy of the transcript is annexed hereto as **Exhibit “B”**.

4. March 25, 2013 — The Journal News -

- a. Smith has charged that Levy tried to use his office to influence the investigation. He's asked federal officials to probe whether Levy broke laws by aiding Hossu, a 35-year-old illegal Romanian immigrant charged with raping a 12-year-old girl.
- b. Levy's connection to Hossu has been the talk of Putnam. Robert Cullen, a Southeast Town Board member and Indian Wells neighbor, said the neighborhood has experienced a lot of commotion.
- c. "It's a quiet cul-de-sac, On Friday and Saturday, there was a lot of activity with helicopters hovering." He said. "My 10-year-old daughter was freaked out with the noise. This wasn't anything we expected."
- d. Also over the weekend, Cullen said, someone had posted fliers around the neighborhood that included the sheriff's press release criticizing Levy with "bye bye ex-DA Levy" scrawled on it. Cullen said he removed some of those signs and that a neighbor had alerted the police about it.
- e. "I didn't think it was appropriate," Cullen said. "There's a lot of kids in the neighborhood."
- f. Cullen said he had never seen Hossu in the neighborhood.

5. March 25, 2013 — The Journal News— Putnam rape victim 's relative says suspect boasted of ties to DA Levy

a. The sheriff has accused Levy of using his office to mislead the public and influence the rape investigation. The [alleged victim's] relative is now furious at.. .Levy.

a. "I don't care if this takes down the D.A.," the relative said.

84. On March 25, 2013, after reading the above-mentioned articles and watching several television broadcasts that repeated defendant Smith's defamatory comments, plaintiff prepared a second Press Release which reiterated that, immediately upon learning about the rape allegation against Hossu, plaintiff did

recuse himself from the matter, turned it over to the Westchester DA's Office and offered his complete cooperation. Plaintiff further stated, "Despite Sheriff Smith's unfounded allegations and misstatements, the facts will show my office acted properly in every aspect of the investigation...." A true and accurate copy of plaintiff's March 25, 2013 Press Release is attached hereto as **Exhibit "C"**.

85. Release of plaintiff's second press release did not cause defendant Smith to abate or curb his defamatory statements about plaintiff which continued as follows:

6. March 26, 2013 — Putnam County News and Reporter *O'Dell Calls on Sheriff to Step Aside in Rape Case*

- a. In an exclusive interview Sunday, Smith told the Courier and PCNR that his department's investigation continues to center on the "vicious rape of a little girl".
- b. Smith noted that he has already asked federal officials to conduct a "thorough investigation" in determining if DA Levy violated immigration laws by "harboring, shielding, aiding or abetting" his former personal trainer.
- c. When first arrested, the sheriff stated that "Hossu resided at 70 Indian Wells Road, in Southeast, the home of the district attorney".
- d. The case came to authorities only recently because Smith said the "victim reported the alleged sexual contact to a school counselor"
- e. As to DA Levy's statement that it was he who recused his office due to his former involvement with the defendant...Sheriff Smith countered..."Mr. Levy's office could not properly continue to participate in the investigation in any way. The recusal of Mr. Levy's office was not his original idea at all."
- f. Smith alleged that the district attorney is "trying to influence and effect the investigation which could be perceived as an ethical violation of his official duties."

7. March 26, 2013 — The Journal News - *Trainer's rape case is put off until May*

- a. Sheriff Donald Smith has charged that Levy tried to use his office to influence the investigation. He's asked federal officials to look into whether Levy broke laws by aiding Hossu.
 - b. "The girl recently told a school counselor, who contacted the state's child abuse hotline as required", law enforcement sources told The Journal News. This prompted the police probe and interviews with the victim. Authorities determined she was credible and made the arrest March 20.
- 8. March 29, 2013 — The Journal News *Putnam D.A. Adam Levy says Sheriff targets him over slights*
 - a. "The sheriff has referred the matters concerning Mr. Levy's reported relationship with Alexandra Hossu to federal authorities...."
 - b. "The sheriff is confident that the government's investigation will reveal the truth on these matters."
- 9. March 26 — April 1, 2013 issue — The Examiner News —*DA claims Sheriff's Release was "Erroneous" Smith charges Levy's Comments as "Untrue"*
 - a. DA Levy is quoted: "Upon learning that the Putnam County Sheriff's Department was investigating an allegation against Mr. Alexandru Hossu, who my family had known for years, I immediately requested the appointment of an independent prosecutor," said Levy. "At the same time, my office contacted the chief of the sex crimes investigations unit of the Westchester County District Attorney's office. This was to ensure the 15-year-old complainant was safe, secure and provided with all necessary services to reduce the overwhelming trauma associated with a disclosure of this type."
 - b. "The Westchester County District Attorney was formally assigned the task of assisting the Sheriff in the investigation and to provide whatever guidance, support and advice was necessary to ensure the case was handled in a professional and objective manner. Those were my obligations as district attorney and I performed them without hesitation." Levy denies having any knowledge about Hossu's immigration status.

Sheriff Smith responded —

- c. ***The sheriff's department is standing by the statement it released. In fact, Sheriff Don Smith sent a retaliation statement out that refuted Levy's statement.***

d. Smith accused Levy of "trying to influence and effect the investigation, which could be perceived as an ethical violation of his official duties and perhaps even as an attempt to undermine it."

- e. Smith is calling for a federal investigation of Levy's actions.

- f. "I have formally requested federal officials to conduct a thorough investigation into this matter to determine whether any prosecutable violations of immigration laws were committed, whereby Mr. Hossu may have been harbored, shielded, aided or abetted in the time leading up to, during, or following his vicious rape of the little girl in Southeast," said Smith.

"Smith is running for re-election this year. One of his potential opponents is Christopher York, chief assistant district attorney, who Levy has openly backed support for."

86. The defamatory statements made by defendant Smith were also published on-line - in various web-based publications such as:

1. Lu, Andrew, "**Judge Judy's Son, a DA, Interfering in Child Rape Case**": Celebrity Justice, 3/27/13

- a. Judge Judy's son is being accused of interfering in a child rape case.
- b. The Sheriff has also asked federal authorities to probe whether Levy broke any laws by aiding Hossu.
- c. Interfering with a criminal investigation is a serious charge in New York.
- d. Generally, someone can be charged with obstruction of justice if he attempts to obstruct, impair or pervert the administration of law by intimidation, interference or some other means. While no formal charges have been brought against Levy, the county sheriff is suggesting that Levy obstructed justice by throwing his weight and position around.
- e. For such accusations. Levy could potentially face a Class A misdemeanor charge.

2. Fitzgerald, Jim, **“Judge Judy’s son ‘influenced rape case.’** The Courier-Mail Web, 3/27/13
 - a. The district attorney son of Judge Judy is accused of interfering in a child rape case...
 - b. “He is apparently trying to influence and affect the investigation, which could be perceived as an ethical violation of his official duties and perhaps even an attempt to undermine it”. Sheriff Donald Smith says.
 - c. In his initial news release, the sheriff gave the defendant’s address as Levy’s home in Southeast, New York. Later, he described Hossu as Levy’s “live-in personal trainer.”
 - d. “In my view, Mr. Levy’s comments and actions would seem to suggest that, if he could have his own way, Mr. Hossu would never have been brought to justice for his crime and Mr. Levy’s relationship with him would never have been brought to the light of public scrutiny,” the Sheriff said.

3. Bellini, Danica, **“Judge Judy’s Son Adam Levy Interferes with Rape Case Investigation: DA Hires Child Rapist Alexandru Hossu as Live-In Personal Trainer”**, mstarz.com, March 27, 2013
 - a. Several reports confirm that popular Putnam County District Attorney Adam Levy (also the son of infamous TV Judge Judy Scheindlin) is accused of trying to “influence and affect the investigation” of a child rape case involving his live-in personal trainer Alexandru Hossu and a 12-year-old girl.
 - b. Putnam County Sheriff Donald B. Smith and his supporters have criticized Levy for protecting Hossu, misleading the investigation, and providing the alleged child rapist (an illegal immigrant from Romania) with free housing at his million dollar luxury home in New York.

4. Similar articles appeared on-line from March 26-27, 2013 as follows:
 - a. theTristatehomepage Web,
 - b. the wire.sheknows.com Web,
 - c. Newsmax,
 - d. Guardian.com Web,
 - e. the Christian Post,
 - f. Jewishvoiceny.com Web,

g. Zap2it.com Web,

87. Notwithstanding the repeated statements made by defendant Smith, to wit: (a) plaintiff used his office to influence a child rape case involving a suspect he knew well; (b) plaintiff tried to undermine and influence the investigation of an accused child rapist; (c) plaintiff tried to influence and affect the investigation; (d) plaintiff committed ethical violations of his official duties and even undermined those duties by influencing the investigation; (e) plaintiff tried to distract the citizens from what this case was really about, the vicious rape of a 12-year-old girl, and (f) plaintiff used his office to mislead the public and influence the rape investigation, no evidence was ever produced by Smith to support any of these false and defamatory statements.

88. As for defendant Smith's March 22, 2013 statement that plaintiff "harbored, shielded, aided and abetted in the time leading up to, during or following Hossu's vicious rape of a the little girl in Southeast", and Smith's "request for a federal investigation," federal agents from Homeland Security conducted an investigation following this request.

89. Notwithstanding a thorough, expensive and time-consuming investigation, Homeland Security closed their case after they were unable to find any witness or any evidence to support Smith's claims regarding plaintiff. As with Smith's other false claim (i.e., that plaintiff "undermined, influenced and interfered" with the investigation), Smith was unable to provide Homeland Security with any evidence or proof to support his claim that plaintiff violated any federal law.

90. Based upon plaintiff's vocal public criticism of defendant Smith, as illustrated in paras. 13 and 14 above, and knowing that plaintiff's public criticism would continue during the campaign season, defendant Smith saw plaintiff as standing in his way to securing the Republican party nomination in May 2013 and then winning his party primary in September and the general election in November.

91. Since defendant Smith viewed plaintiff as his political enemy and as defendant Smith has done with his other political enemies, he maliciously attacked plaintiff as set forth above.

92. By uttering and otherwise publishing the statements set forth above, defendant Smith maliciously attempted to destroy plaintiff's professional reputation.

93. By uttering and otherwise publishing the statements set forth above and casting substantial aspersions upon plaintiff's character, judgment and integrity, defendant Smith maliciously attempted to destroy plaintiff's future professional opportunities.

94. By and through the referenced statements, defendant Smith has adversely affected plaintiff's professional standing.

F. **AS AND FOR PLAINTIFF'S CAUSES OF ACTION**

95. Plaintiff incorporates paras. 1-94 herein as if fully repeated.

96. By issuing public statements which intentionally and with actual malice impugned plaintiff's character, judgment and integrity as set forth in paras.

83, 85 and 86 above, defendant Smith committed defamation per se. Each of defendant's statements was maliciously intended to falsely cast plaintiff in a negative light and is separately actionable.

97. By publicly instigating a federal investigation of the plaintiff without cause, in bad faith and for the sole purpose of embarrassing plaintiff and diminishing his professional standing, defendant Smith further defamed plaintiff and intentionally subjected him to public ridicule.

G. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court accept jurisdiction over this matter, empanel a jury to hear and decide plaintiff's claims, award to plaintiff \$3,000,000 in compensatory and \$2,000,000 in punitive damages against defendant Smith, cause defendant to be restrained in the making and dissemination of knowingly false and malicious statements and accusations against plaintiff, allow plaintiff to amend this Complaint when he identifies those who acted in concert with Smith to defame him, award to plaintiff the costs, disbursements and attorneys' fees arising from this matter [based on the malicious nature of the per se defamation engaged in by defendant Smith] and enter any other order which the

interests of justice and equity compel.

Dated: August 14, 2013
Goshen, New York

MICHAEL H. SUSSMAN

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(845)-294-3991
Counsel for Plaintiff

VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF PUTMAN)

Adam B. Levy, having been duly sworn, hereby states and deposes under pains and penalties of perjury:

1. I am the plaintiff in this matter and have retained Michael H. Sussman, Esq., to serve as my counsel herein.

2. I have reviewed the annexed Complaint and verify that the facts set forth therein are true to my knowledge and belief except as to any set forth upon information and belief and as to those, it is my belief that each is true.

ADAM B. LEVY, ESQ.

SIGNED AND SWORN TO BEFORE ME
THIS ____ DAY OF AUGUST 2013.

NOTARY PUBLIC
